

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NICHOLAS HEIMANN,

Plaintiff,

vs.

UNIVERSITY OF NEBRASKA MEDICAL
CENTER, UNIVERSITY OF NEBRASKA
BOARD OF REGENTS, DR. SURINDER
K. BATRA in his official capacity and
individually,

Defendants.

8:18CV128

PROTECTIVE ORDER

This matter is before the Court on the parties' Motion and Stipulation for Protective Order. ([Filing No. 19.](#)) The motion is granted. Accordingly,

IT IS ORDERED as follows:

A. Confidential Information Defined. For purposes of this Protective Order ("Order"), "Confidential Information" shall be defined to include all information furnished by one party to another party, as well as all notes, analyses, interpretation and other documents prepared upon the basis of Confidential Information received from a party. Confidential Information shall include, but shall not be limited to, information which is subject to protection under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g as amended, and confidential personnel information. Such definition applies whether or not such information is marked or designated on the document as confidential. The term "Confidential Information" does not include information which:

- i. was or becomes generally available to the public other than as a result of a disclosure prohibited by the terms hereof;
- ii. was or becomes available to a party hereto on a non-confidential basis from a source other than a party hereto or its employees, agents or advisors, provided the source of such information is not bound by a confidentiality order regarding such information or is not otherwise prohibited from transmitting such information to a party hereto, and provided, however, that information within the definition of Confidential Information shall include such information disclosed prior to the effective date of this Order by a party or its employees, agents, or advisors within the last twelve (12) months prior to the effective date of this Order; or
- iii. was available to a party on a non-confidential basis prior to its disclosure by another party, its employees, agents or advisors.

Each of the parties acknowledge that the other party's Confidential Information is proprietary and confidential and that maintaining such confidential nature is required hereunder and by law and is reasonable and required in order to maintain compliance with applicable law and for the continued operations and success of the party disclosing such Confidential Information, and a breach hereof would cause irreparable harm and damaged to the non-breaching party.

B. Restrictions Regarding Disclosure of Confidential Information. Each party shall hold Confidential Information of the other party in strict confidence and use it solely for the purpose of evaluating and conducting the litigation between them and not in any way for its own or any other person's or entity's benefit and shall not disclose such Confidential Information to any third party without the prior written permission of the party providing the Confidential Information. In addition, the parties shall maintain in confidence this Order and any negotiations and discussions between them.

C. Disclosure for Purposes of Litigation. Notwithstanding the foregoing, the parties may disclose the Confidential Information of the other party to its respective employees, agents and advisors, but only to the extent necessary to evaluate and conduct the litigation between them. And prior to such disclosure, all such employees, agents and advisors shall be informed of the confidential nature of the Confidential Information and instructed not to disclose such information without the information without the prior written consent of the party providing the Confidential Information. Each of the parties shall be fully responsible for the acts of its respective employees, agents and advisors with respect to the Confidential Information, whether or not such acts were authorized or approved by a party. Each party shall take all reasonable precautions to prevent inadvertent use, copying or disclosure of Confidential Information.

D. Any Confidential documents that are filed with the court will be reviewed by the party proposing the document, and the names and other

identifying details of the students or former students involved will be deleted (or replaced with initials). The parties will attempt to agree to any deletions of information in advance. If the parties are unable to agree on the deletion of information, the court will be requested to review the document in camera and make a determination of what, if any, information should be deleted from the document.

E. Return of Confidential Information. The parties shall, upon application by a party for and entry of the order of this court or other subsequent court having jurisdiction of the litigation to do so, return the Confidential Information provided by and about the applying party to the applying party all, or any specified part, of the Confidential Information of the applying party, including all copies of such information. Notwithstanding the foregoing, the parties shall continue to be bound by the obligations of confidentiality imposed by this order, even after its termination, or the termination of the litigation.

F. Regulatory Reporting Duties. Nothing contained in this Order shall limit, restrict or impair the parties' performance of any governmental regulatory reporting duties or requirements, and such party's performance of any such duties or requirements shall not be a violation of this Order.

Dated this 27th day of August, 2018.

BY THE COURT

s/ Susan M. Bazis
United States Magistrate Judge